IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CASE NO.: **CWP No.11123 of 2006**
DATE OF DECISION: September 5, 2007

B.S. NAIN ...PETITIONER

VERSUS

STATE OF HARYANA AND ANOTHER ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE ASHUTOSH MOHUNTA.

PRESENT: MR. P.K. MUTNEJA, ADVOCATE FOR THE PETITIONER.
MR. HARISH RATHEE, SR.DAG, HARYANA.

ASHUTOSH MOHUNTA, J. (ORAL)

The petitioner joined the Excise & Taxation Department of the State of Haryana as Taxation Inspector in December, 1975. In April, 2000 the petitioner came to know that he is suffering from chronic renal failure. After getting sanction from the Chief Medical Officer, Fatehabad, the petitioner was operated for kidney transplant at Batra Hospital and Medical Research Centre, New Delhi on 30.9.2000. The kidney was donated to the petitioner by his cousin sister. After the kidney transplant the petitioner submitted his medical bills for reimbursement. The medical bills for the treatment of donor i.e. cousin of the petitioner was also submitted. Although the medical bills submitted on account of kidney transplant of the petitioner were reimbursed to him, however, no reimbursement was made by the respondents for the treatment which the donor underwent at Batra Hospital.

The petitioner has prayed that he is entitled to be reimbursed all the medical expenses for the treatment undergone by his cousin sister at Batra Hospital because of the donation of kidney of the donor due to which a successful kidney transplant operation could be performed on the

petitioner.

Learned counsel for the petitioner has placed reliance on the instructions dated 6.5.2005, by which the reimbursement policy has been reviewed by the State of Haryana. According to the said policy, the reimbursement of expenditure for operating upon the kidney donor is also permissible if the treatment has been taken in a Government or Government approved hospital being a planned procedure.

Learned counsel for the petitioner submits that Batra Hospital is duly approved hospital by the Haryana Government, as is clear from a perusal of Annexure P-11.

On the other hand, Mr. Harish Rathee, Sr. DAG, Haryana submits that the petitioner had earlier also preferred writ petitions (Judgements Annexures P-2 & P-3). The aforementioned relief was not granted to the petitioner whereas all the medical expenses except the medical expenses of the donor have been reimbursed to the petitioner. Learned counsel further submits that the instructions dated 6.5.2005, would be applicable only from the date of issue of the instructions and not from the date earlier to that.

A perusal of the judgement (Annexure P-3) shows that the respondents had been directed to pass a speaking order with regard to the claim of the medical reimbursement. The respondents have passed the order (Annexure P-6) according to which the reimbursement for the medical bills submitted on behalf of the donor have been rejected on the ground that the donor should be a Government servant or a dependent member of the patient.

After hearing learned counsel for the parties, I am of the

considered opinion that the order (Annexure P-6) cannot be sustained in the eyes of law. As per the order only an official of the Haryana Government or a dependent member of the patient can be given medical reimbursement. This situation is absolutely preposterous because if the kidney of such donor does not match with the patient then he will have to wait indefinitely which obviously cannot be the intention of the instructions regarding the medical reimbursement. Since, in transplant of kidney cases, even the donor has to be operated upon, therefore, it is only just and fair that the entire medical reimbursement is given to the donor also. The Government itself has decided vide instructions dated 6.5.2005, that reimbursement on the expenditure for operating upon the kidney donors is permissible if the treatment is taken at a Government or a Government approved hospital. In the present case, as the donor was operated upon at Batra Hospital and Medical Research Centre, New Delhi which is an approved hospital, therefore, the petitioner would be entitled to the reimbursement on the expenditure incurred in operating the donor also. As the instructions dated 6.5.2005, were issued in pursuance to the judgements (Annexures P-1 & P-2), therefore, the petitioner is held entitled to claim reimbursement for the expenses incurred on the donor of the kidney.

Resultantly, this writ petition is allowed with a direction to the respondents to fully reimburse the medical expenses incurred on the medical treatment of donor of the kidney within a period of three months from the date of receipt of certified copy of this order.

September 5, 2007 **(ASHUTOSH MOHUNTA)**
Gulati **JUDGE**